

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **WESTERN DISTRICT OF PENNSYLVANIA**

4 BARRY GREEN,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   )

8 BLUESTEM BRANDS, INC. d/b/a                                   )

9 FINGERHUT,                                   )

10                                   Defendant                                   )

---

**Case No.:**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

11

12                                   **COMPLAINT**

13                   BARRY GREEN (“Plaintiff”), by and through his attorneys, KIMMEL &  
14 SILVERMAN, P.C., alleges the following against BLUESTEM BRANDS, INC.  
15 d/b/a FINGERHUT (“Defendant”):  
16

17                                   **INTRODUCTION**

18                   1.     Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act (“TCPA”).  
20

21                                   **JURISDICTION AND VENUE**

22                   2.     Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
24

25                   3.     Defendant conducts business in the Commonwealth of Pennsylvania  
and as such, personal jurisdiction is established.



1 continuous basis.

2 14. During the relevant period, Defendant called Plaintiff on his cellular  
3 telephone, on average, once a day.  
4

5 15. When contacting Plaintiff on his cellular telephone, Defendant used an  
6 automatic telephone dialing system and automatic and/or pre-recorded messages.  
7

8 16. Defendant's automated messages identified its company name as the  
9 caller.

10 17. Defendant's telephone calls were not made for "emergency purposes."

11 18. On April 17, 2015, Plaintiff spoke with Defendant and revoked any  
12 consent previously given to Defendant to place telephone calls to his cellular  
13 telephone number.  
14

15 19. Defendant heard and acknowledged Plaintiff's revocation of consent  
16 and demand to stop calling his cellular telephone number.  
17

18 20. Defendant claimed, however, the only way to stop future calls was  
19 for Plaintiff to make payment.

20 21. Thereafter, Defendant persisted in calling Plaintiff on his cellular  
21 telephone every day.  
22

23 22. Most recently, Defendant called Plaintiff on April 22, 2015.  
24  
25

**DEFENDANT VIOLATED THE  
TELEPHONE CONSUMER PROTECTION ACT**

23. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

24. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using a prerecorded voice.

25. Defendant initiated these automated calls to Plaintiff using an automatic telephone dialing system.

26. Defendant's calls to Plaintiff were not made for emergency purposes.

27. Defendant's calls to Plaintiff, after April 17, 2015, were not made with Plaintiff's prior express consent.

28. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

29. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

30. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, BARRY GREEN, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, BARRY GREEN, demands a jury trial in this case.

1 RESPECTFULLY SUBMITTED,

2 DATED: June 10, 2015

KIMMEL & SILVERMAN, P.C.

3  
4 By: /s/ Craig Thor Kimmel

5 Craig Thor Kimmel

6 Attorney ID # 57100

Kimmel & Silverman, P.C.

7 30 E. Butler Pike

8 Ambler, PA 19002

9 Phone: (215) 540-8888

Fax: (877) 788-2864

10 Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)